

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE TREMONT SECURITIES LAW,	:	Master File No.:
STATE LAW and INSURANCE	:	08 Civ. 11117 (TPG)
LITIGATION	:	
	:	
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This Document Relates To:	:	ECF CASES
	:	Electronically Filed
State Law Actions, 08 Civ. 11183 (TPG)	:	
Securities Actions, 08 Civ. 11212 (TPG)	:	
Insurance Actions, 09 Civ. 557 (TPG)	:	
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**TREMONT'S OPPOSITION TO HAINES' MOTION TO FILE A SUR-REPLY  
DECLARATION ON REMAND FROM THE SECOND CIRCUIT**

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Cynthia J. Nicoll and Darren Johnston

The Tremont Defendants<sup>1</sup> respectfully submit this opposition to the motion of objectors Madelyn Haines and Paul Zamrowski (together, "Haines") for leave to file a sur-reply declaration (the "Motion," Dkt. 903).

## **ARGUMENT**

### **THE HAINES MOTION SHOULD BE DENIED**

Haines filed the Motion after the parties completed the briefing directed by this Court's order dated October 29, 2013 (the "10/29 Order," Dkt. 875). Haines contends that a sur-reply is warranted because she could not anticipate Tremont's response to one of the arguments she made in the course of that briefing. (Mot. at 2.) Assuming this is true, it does not justify a sur-reply.

The question posed by the Second Circuit in its Summary Order remanding this case seeks clarification of the scope of the release (the "Release") contained in the partial settlement of this litigation approved by this Court. The question, in essence, is: does the Release bar Haines from suing Tremont in connection with a different settlement, namely, the settlement among Tremont, certain of its affiliates and Irving Picard, the trustee ("Trustee") of the bankruptcy estate of Bernard L. Madoff Investment Securities LLC (the "Trustee Settlement").

Haines' proposed sur-reply will shed no light on this question. She represents it will include evidence bearing on the source of a portion of the settlement consideration for the Trustee Settlement, *i.e.*, it will support her contention that the Second Circuit made a

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<sup>1</sup> The Tremont Defendants, also referred to herein as "Tremont," are: Tremont Partners, Inc., Tremont Group Holdings, Inc., Tremont (Bermuda) Limited, Tremont Capital Management, Inc., Rye Investment Management, Robert I. Schulman, Rupert A. Allan, Harry Hodges, James Mitchell, Lynn O. Keeshan, Patrick Kelly, Stephen Thomas Clayton, Stuart Pologe, Cynthia J. Nicoll and Darren Johnston.

determination in its Summary Order regarding the source of the cash used by the Market Neutral Funds to pay their share of the consideration. Again, even if true, it is irrelevant to the question before this Court, namely, does the Release bar Haines from claiming that the Market Neutral Funds used non-Madoff cash to contribute to the Trustee Settlement. Because the proposed sur-reply includes nothing pertinent to this question, leave to file it should be denied.

**CONCLUSION**

For the reasons stated, Haines' motion for leave to file a sur-reply should be denied.

Dated: New York, New York  
December 9, 2013

Respectfully submitted,

/s/ Seth M. Schwartz

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